IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5350 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHAIKH ABDULMASJID I & 28 - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR IS SUPEHIA for Petitioner(s) : 1 - 29.
Ms. Archana Raval, AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 07/09/2006

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India the petitioners have prayed for an appropriate writ, direction or order quashing and setting aside the orders dated

31.5.1996 relieving/discharging the petitioners from services on completion of their tenure. All the petitioners were appointed as 'Junior Clerks' by orders dated 2.11.1994 for the purpose of Assembly elections till 28.2.1995 on temporary ad-hoc basis. That all the petitioners were discharged from service with effect from 31.3.95. Petitioners were again appointed by order dated 10th April 1995 for the purpose of General Panchayat election from 1.4.95 to 31.5.95. On completion of the said work the petitioners again came to be discharged from service from 1.7.95. That by order dated 22nd March 1996 the petitioners again came to be appointed till 31.5.1996 in connection with the Lok Sabha elections and on completion of the election and their tenure all the petitioners came to be discharged from service with effect from 31.5.1996. Being aggrieved and dissatisfied with the said order of discharge, the petitioners have preferred the present Special Civil Application

for the aforesaid reliefs.

2. Shri IS Supehia, learned advocate appearing for the petitioners has vehemently submitted that the last appointment made on 22nd March 1996 would go to show that the petitioners were appointed in the pay-scale of Rs. 950-1500 on temporary basis for the work during election and therefore their services could have been terminated by giving either one week's notice or notice pay in compliance with Rule 33(1)(b) of the B.C.S.R. It is requested to allow the present Special Civil Application, as neither the petitioners were paid one week notice pay or given any prior notice.

3. The petition is opposed by the State Government. It is submitted that as appointment of the petitioners were made purely on temporary and ad-hoc basis for a particular period upto 31.5.1996; their appointments were made for a

particular purpose of election; on completion of their tenure once the election was over none of the petitioners had any right to continue; as such as the petitioners were not appointed on temporary posts or on permanent establishment Rule 33(1)(b) of the BCSR is not applicable; and therefore it is requested to dismiss the present Special Civil Application.

4. Heard the learned advocates appearing for the parties. It is not in dispute that all the petitioners were appointed initially on temporary and ad-hoc basis for the purpose of Assembly elections and their appointments were to continue till 28.2.1995. By Memo dated 31.3.1995 all the petitioners were discharged from service with effect from 31.3.1995. Again for the purpose of General Panchayat Election the petitioners were appointed on temporary and ad-hoc basis till 31.5.1995 and all the petitioners came to be discharged from service from 1.7.1995. Again,

for Parliamentary elections, the petitioners came to be appointed on temporary and adhoc basis till 31.5.1996 and on completion of the Lok Sabha election all the petitioners again came to be discharged from service. As stated above, the appointments of the petitioners were made on temporary and ad-hoc basis for a particular purpose, i.e., for Lok Sabha elections till 31.5.1996. Therefore, the appointment of the petitioners as daily-wagers, i.e., on temporary and ad-hoc basis were not made on permanent establishment, and were made for a particular project, i.e., Lok Sabha elections. Therefore, at the end of 31.5.1996 when the Lok Sabha elections were over, none of the petitioners had any right to continue in the job. Considering the fact that the petitioners were appointed on temporary and ad-hoc basis on a particular project/work and upto a particular period, the provisions of Rule 33(1)(b) of the BCSR would not not be applicable. Merely because the

petitioners were given the pay-scale of Rs. 950-1500, it cannot be said that the petitioners were appointed on a permanent set-up and/or establishment. Under the circumstances, no illegality has been committed by the respondents in discharging the petitioners from service with effect from 31.5.1996. In view of the above, there is no substance in the present Special Civil Application and the same is required to be dismissed and is accordingly dismissed. Rule is discharged. Ad-interim relief stands vacated forthwith.

[M.R. Shah, J.]

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